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CHUMASH
INDIANS



2018 CALIFORNIA TRIBAL WATER SUMMIT

- **Moderator:** Sam Cohen: *Government Affairs and Legal Officer-Santa Ynez Band of Chumash Indians*



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CASE STUDY UNDER NEPA: GEO-THERMAL LEASES

PIT RIVER TRIBE; Native Coalition for
Medicine Lake Highlands Defense; **Mount Shasta
Bioregional Ecology Center**, Plaintiffs–Appellants,

v.

UNITED STATES FOREST SERVICE;
Advisory Council on Historic Preservation;
United States Bureau of Land Management;
Calpine Corporation, Defendants–Appellees.
No. 04–15746.

|
469 F.3d 768 (9th Cir. 2006)



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Medicine Lake and the highlands surrounding it are of great spiritual significance to the Pit River Tribe and to the other Native American tribes in the region. Although the highlands are within the Pit River Tribe's ancestral homelands, they are not part of the tribe's reservation.

Tribe members, however, consider the region sacred and continue to use numerous important spiritual and cultural sites within the highlands.



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The 1973 [Programmatic] EIS stated that, in addition to review of geo-thermal leasing decisions,

“[p]rior to the construction of power plants and transmission lines, and possibly of by-product water and mineral extraction facilities, further environmental evaluation will be made. If there are significant potentially adverse environmental impacts not previously considered, an additional environmental statement may be necessary.”



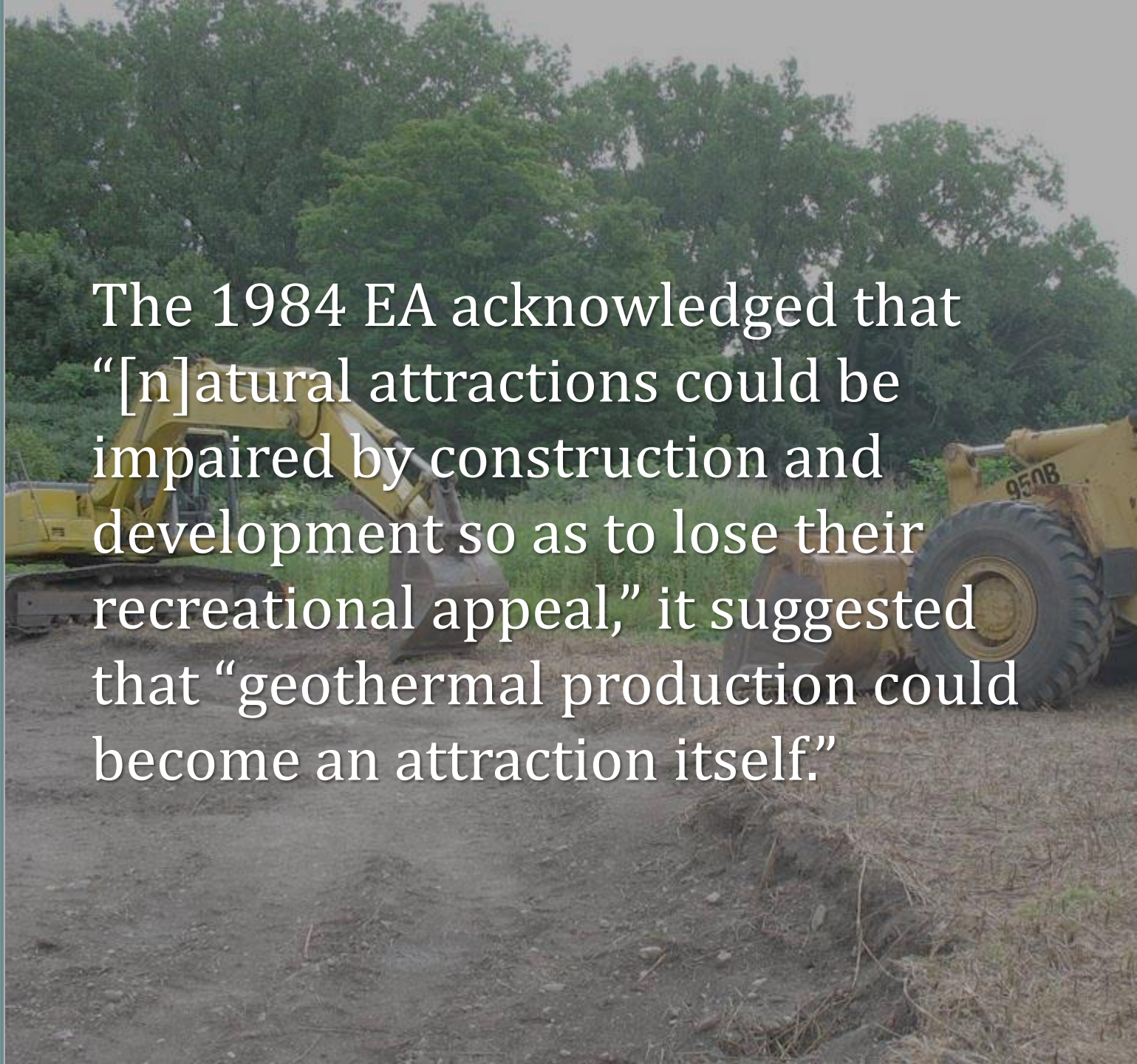
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Pit River alleges that [the 1981 geo-thermal leases] in the Medicine Lake Highlands, and the subsequent approval of a geothermal plant to be built there, violated the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), the National Forest Management Act (NFMA), and the Administrative Procedure Act (APA).



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The 1984 EA acknowledged that “[n]atural attractions could be impaired by construction and development so as to lose their recreational appeal,” it suggested that “geothermal production could become an attraction itself.”





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The 1984 EA also discussed the historical significance of the area: “Although no sites in the study area are currently on the National Register of Historic Places, many have been judged eligible and several are in the process of being nominated.

Nomination and/or acceptance is, however, no obstacle to a site's removal by scientific excavation.”



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The Bureau and the Forest Service subsequently mailed the 1984 EA to approximately one hundred individuals and organizations who were known to have been interested in the project. It is uncertain whether the 1984 EA was mailed to Pit River. The Bureau received only four letters in response, none of which was from Pit River.



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The agencies issued a ROD approving the Fourmile Hill Plant on May 31, 2000. The ROD stated that Calpine had been issued “federal leases for the right to develop the geothermal resource on federal lands,” and that this “vested property interest” superseded an Executive Order on Indian Sacred Sites [E.O. 13007].



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The agencies violated their duties under NEPA and NHPA and their fiduciary duty to the Pit River Tribe by failing to complete an environmental impact statement before extending Calpine's leases in 1998. Hence, both the five-year lease extensions and the subsequent forty year extensions must be undone.



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The United Nations General Assembly has adopted the United Nations Declaration on the Rights of Indigenous Peoples on September 13, 2007

Article 25

“...Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources to uphold their responsibilities to future generations in this regard...”



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Article 32

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.



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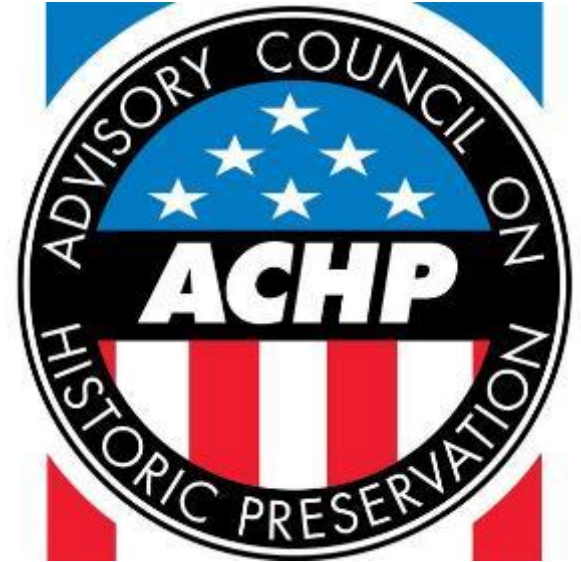
In December 2010, the
United States announced
support for the UN
Declaration on the Rights
of Indigenous Peoples.





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WHEREAS, as of June 2013, the federal Advisory Council on Historic Preservation (ACHP) approved the UN Declaration on the Rights of Indigenous Peoples. ACHP will now incorporate the UN Declaration on the Rights of Indigenous Peoples in the National Historic Preservation Act (NHPA) Section 106 review process





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On March 24, 2014, both houses of the California State Legislature adopted Assembly Joint resolution No. 42:

Resolved by the Assembly and the Senate of the State of California, jointly, That the Legislature of California expresses its endorsement of, and commitment to, the principles of the United Nations Declaration on the Rights of Indigenous Peoples adopted by the United Nations General Assembly;



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Assembly Bill 52

Establishes new category of tribal cultural resources (TCRs), for which only tribes are experts

- *Not necessarily visible*
- *Not necessarily archaeological*
- *Often religious or spiritual in nature*



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AB 52 codified in Public Resources Code 21074

a) “Tribal cultural resources” are either of the following:

(1) Sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are either of the following:

(A) Included or determined to be eligible for inclusion in the California Register of Historical Resources.

(B) Included in a local register of historical resources as defined in subdivision (k) of Section 5020.1.



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OLD RULE: TRADITIONAL CULTURAL PROPERTIES (TCP) NEED
TO BE ARCHEOLOGICAL FOR PROTECTION

MADERA OVERSIGHT COALITION, INC., et al., Plaintiffs and
Appellants,

v.

COUNTY OF MADERA, Defendant and Appellant;
Tesoro Viejo, Inc., et al., Real Parties in Interest and Appellants
(5th Dist. App. 2011)

CEQA requires consideration of project impacts on either
archaeological sites or historical sites deemed to be historical
resources.

Archaeological sites that are not historical resources are subject
to different requirements. As a result, unique archaeological
sites that are not historical resources are subject to less
stringent requirements regarding mitigation of impacts.



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NEW AB 52 RULE: CAN PROTECT WATER AS SACRED (Napamu')

Finally, water is sacred to many tribes.

Why is there no discussion in the Albion Report or the DEIR about the cultural value of water or of steelhead?

That places of power are often found at confluences of Rivers?

That the powers of such locations flow into the resources that spring from or pass through those areas?



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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2016-0011

DIRECTING STAFF TO DEVELOP
PROPOSED BENEFICIAL USES
PERTAINING TO TRIBAL
TRADITIONAL AND CULTURAL,
TRIBAL SUBSISTENCE FISHING,
AND SUBSISTENCE FISHING



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ATTACHMENT A TO STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2016-0011

As referenced in recital 11 in the accompanying resolution, tribes and tribal representatives propose the following beneficial uses:

California Indian Tribal Traditional and Cultural Use:

Uses of water that supports the cultural, spiritual and traditional rights and lifeways of California Indian Tribes. This includes but is not limited to: fishing, gathering, and safe consumption of traditional foods and materials, as defined by California Indian Tribes, for subsistence, cultural, spiritual, ceremonial and navigational activities associated with such uses.



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EACH REGION MUST ADOPT:

Currently, only the North Coast Regional Water Board (Region 1) has adopted a Native American Culture (CUL) beneficial use definition:

Native American Culture (CUL) Uses of water that support the cultural and/or traditional rights of indigenous people such as subsistence fishing and shellfish gathering, basket weaving and jewelry material collection, navigation to traditional ceremonial locations, and ceremonial uses



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Tribes Requesting SWRCB AB 52 Consultation (Updated 3/22/2017)

Mishewal Wappo Tribe of Alexander Valley

Wilton Rancheria

Colorado River Indian Tribes

Elk Valley Rancheria

Ohlone/Costanoan-Esselen Nation

Wiyot Tribe

Federated Indians of Graton Rancheria

Winnemem Wintu Tribe

United Auburn Indian Community

San Luis Rey Band of Mission Indians

Yurok Tribe

Torres Martinez Desert Cahuilla Indians

Cher-Ae Heights Indian Community of the Trinidad Rancheria

Middletown Rancheria

Barona Band of Mission Indians

Gabrieleño Band of Mission Indians- Kizh Nation

Santa Rosa Rancheria Tachi Tribe

Shasta Indian Nation

Gabrieleno Tongva San Gabriel Band of Mission Indian



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QUESTIONS/ COMMENTS

